

REPORT OF THE CHIEF COUNSEL OF THE U. S. COAST GUARD

October 1, 1999 to September 30, 2000

NOTE: All statistics presented in this analysis are based upon the number of court-martial records received and filed at Coast Guard Headquarters during fiscal year 2000 and, where indicated, records received during each of the four preceding fiscal years. The number of court-martial cases varies widely from year to year, in part, based on the small size of the Coast Guard. However, when viewed in a two-year cycle there is a fairly consistent number of courts-martial, with an average of 76 cases every two years. The two-year average has declined in recent years (FY99-FY00 70 cases, FY97-FY98 72 cases, FY95-FY96 85 cases).

<u>Fiscal Year</u>	<u>00</u>	<u>99</u>	<u>98</u>	<u>97</u>	<u>96</u>
General Courts-Martial	10	6	18	6	22
Special Courts-Martial	23	17	21	9	16
Summary Courts-Martial	11	3	8	10	14
Total	44	26	47	25	52

COURTS-MARTIAL

Attorney counsel were detailed to all special courts-martial. Military judges were detailed to all special courts-martial. For most cases, the presiding judge was the Chief Trial Judge, a full-time general courts-martial judge. When the Chief Trial Judge was unavailable, military judges with other primary duties were used for special courts-martial. Control of the detail of judges was centrally exercised by the Chief Trial Judge and all requirements were met in a timely fashion.

GENERAL COURTS-MARTIAL

Seven of the ten accused tried by general courts-martial this fiscal year were tried by military judge alone. Two of the seven accused tried by military judge alone received a dishonorable discharge and three received a bad-conduct discharge. Three accused elected to be tried by general courts-martial that included enlisted members. One of the accused tried by general courts-martial with members received a sentence that included a bad-conduct discharge. Nine of the ten general courts-martial resulted in convictions. Four of the accused whose charges were referred to general courts-martial were nonrated (pay grades E-1 through E-3), five were petty officers (pay grades E-4 through E-6), none were chief petty officers (pay grades E-7 through E-9), and one was a warrant officer or junior officer (W-1 through O-3).

The following is a breakdown of the sentences adjudged in general courts-martial tried by military judge alone (seven convictions):

Sentence	Cases Imposed
dishonorable discharge	2
bad conduct discharge	3
confinement	6
hard labor without confinement	0
reduction in pay-grade	5
fined (total \$900.00)	1
restriction	0
forfeiture of all pay and allowances	2
partial forfeiture of pay and allowances	1

The following is a breakdown of sentences adjudged in general courts-martial tried by members (two convictions).

Sentence	Cases Imposed
dishonorable discharge	0
bad-conduct discharge	1
confinement	1
hard labor without confinement	1
reduction in pay-grade	1
fined (total \$0.00)	0
restriction	1
forfeiture of all pay and allowances	1
partial forfeiture of pay and allowances	1

The following indicates the frequency of imposition of the four most common punishments imposed by general courts-martial in the past five fiscal years.

FY	Number of Convictions	Forfeitures	Confinement	Reduction in Pay-Grade	Punitive Discharge/Dismissal
00	9	5 (56%)	7 (78%)	6 (67%)	6 (67%)
99	6	0 (0%)	6 (100%)	6 (100%)	5 (83%)
98	17	5 (29%)	12 (71%)	16 (94%)	11 (65%)
97	6	2 (33%)	4 (67%)	5 (83%)	4 (67%)
96	22	15 (68%)	19 (86%)	20 (91%)	18 (82%)

The following table shows the distribution of the 68 specifications referred to general courts-martial in fiscal year 2000.

Violation of the UCMJ, Article	No. of Specs.
81 (conspiracy) - - - - -	1
91 (insubordinate conduct) - - - - -	1
92 (failure to obey order or regulation) - - - - -	3
93 (cruelty and maltreatment) - - - - -	2
107 (false official statement) - - - - -	5
108 (wrongful disposition of military property)- - - - -	1
112a (wrongful use, possession, etc. of controlled substances) - - - - -	30
120 (rape or carnal knowledge) - - - - -	3
121 (larceny or wrongful appropriation) - - - - -	6
125 (sodomy) - - - - -	2
128 (assault)- - - - -	2
134 (general) - - - - -	12

GENERAL COURTS-MARTIAL SUMMARY

There was a 67% increase from fiscal year 1999 to fiscal year 2000 in general courts-martial records received and filed at Coast Guard Headquarters. Due to the small size of the Coast Guard this change is not statistically significant when viewed as a single-year change. Over the past 5 years the Coast Guard has averaged 12 general courts-martial per year. Seven of ten accused tried by general courts-martial during fiscal year 2000 were tried by military judge alone. None of these accused tried by general court-martial pled guilty to all charges and specifications.

SPECIAL COURTS-MARTIAL

Twenty-one of the twenty-three accused tried by special courts-martial this fiscal year were tried by military judge alone. Nine accuseds tried by military judge alone received a BCD. One of the two accused tried by a special court-martial with members received a sentence that included a bad-conduct discharge. One accused elected to be tried by a special court-martial that included enlisted members. All of the special courts-martial except one resulted in convictions. At one special court-martial, all charges and specifications were withdrawn prior to findings. Fifteen of the accused whose charges were referred to special courts-martial were nonrated (pay grades E-1 through E-3), eight were petty officers (pay grades E-4 through E-6), one accused was a chief petty officer (pay grades E-7 through E-9), and no accuseds were commissioned officers (W-1 through O-9).

The following is a breakdown of the sentences adjudged in special courts-martial tried by military judge alone (21 convictions).

Sentence	Cases Imposed
bad-conduct discharge - - - - -	9
confinement - - - - -	19
hard labor without confinement - - - - -	3
reduction in pay-grade - - - - -	17
fined (total \$14,000.00) - - - - -	4
restriction - - - - -	2
partial forfeiture of pay and allowances- - - - -	1
reprimand - - - - -	0

The following is a breakdown of the sentences adjudged in the special court-martials tried by members (two convictions).

Sentence	Cases Imposed
bad-conduct discharge - - - - -	1
confinement - - - - -	1
hard labor without confinement - - - - -	1
reduction in pay-grade- - - - -	2
fined (total \$0.00) - - - - -	0
restriction - - - - -	1
partial forfeiture of pay and allowances - - - - -	1
reprimand - - - - -	0

The following shows the four sentences imposed most by special courts-martial in the past five fiscal years.

FY	Number of Convictions	Forfeitures	Confinement	Reduction in	
				Pay-Grade	BCD
00	23	8 (35%)	20 (87%)	19 (83%)	10 (43%)
99	17	8 (47%)	15 (88%)	16 (94%)	9 (53%)
98	20	9 (45%)	9 (45%)	17 (85%)	4 (20%)
97	9	4 (44%)	6 (67%)	8 (89%)	5 (56%)
96	14	11 (79%)	10 (71%)	13 (93%)	7 (50%)

The following table shows the distribution of the 350 specifications referred to special courts-martial in fiscal year 2000.

Violation of the UCMJ, Article	No. of Specs.
80 (attempts)	2
85 (desertion)	4
86 (unauthorized absence)	14
87 (missing movement)	1
89 (disrespect toward a superior commissioned officer)	2
90 (assaulting or willfully disobeying a superior commissioned officer)	1
91 (insubordinate conduct)	5
92 (failure to obey order or regulation)	49
107 (false official statements)	17
112a (wrongful use, possession, etc. of controlled substance)	37
115 (malingering)	1
120 (rape and carnal knowledge)	2
121 (larceny or wrongful appropriation)	136
123 (forgery)	39
123a (insufficient funds)	15
125 (sodomy)	2
128 (aggravated assault)	1
130 (housebreaking)	4
134 (general)	18

SPECIAL COURTS-MARTIAL SUMMARY

There was a 35% increase in special courts-martial received and filed at Coast Guard Headquarters this fiscal year over last fiscal year. Due to the small size of the Coast Guard this change is not statistically significant when viewed as a single-year change. Over the past five years the Coast Guard has averaged 15 special courts-martial per year. Twenty-one of twenty-three accuseds tried during fiscal year 2000 by special courts-martial were tried by military judge alone. Four accuseds tried by special courts-martial pled guilty to all charges and specifications.

CHIEF COUNSEL ACTION UNDER ARTICLE 69, UCMJ

In addition to the required reviews of courts-martial conducted as a result of petitions filed under Article 66, UCMJ, a review was conducted under Article 69(a) and (b) of all courts-martial not requiring Article 66 appellate review.

PERSONNEL, ORGANIZATION, AND TRAINING

The Coast Guard has 177 officers designated as law specialists (judge advocates) serving on active duty - 134 are serving in legal billets and 43 are serving in general duty billets. Nineteen Coast Guard officers are currently undergoing postgraduate studies in law and 18 will be certified as law specialists at the completion of their studies, 6 will graduate in 2001 including one with an LLM in International Law, 6 will graduate in 2002, 7 will graduate in 2003. One LLM candidate will begin study in 2001. Twenty Coast Guard officers (6 funded postgraduate program studies and 13 direct-commissioned lawyers) completed the Navy Basic Lawyer Course in Newport, Rhode Island. All have been or are in the process of being certified under article 27(b), UCMJ.

U. S. COAST GUARD COURT OF CRIMINAL APPEALS

The judges on the U.S. Coast Guard Court of Criminal Appeals at the beginning of fiscal year 2000 were as follows:

Chief Judge Joseph H. Baum
Judge David J. Kantor
Judge Ronald R. Weston
Judge Lane I McClelland

In September 2000, the number of judges on the Court was increased to six with the addition of the following new judges:

Judge William A. Cassels
Judge Robert Bruce

In addition to the decisional work of the Court, as reflected in Appendix A, the judges of the Court have been involved in various professional conferences, committees and seminars during the past fiscal year. In March, 2000, Chief Judge Baum participated in a Chief Judges' Forum with the Chief Judges from the other service courts of criminal appeals as a part of a two-day symposium on appellate military advocacy at the Catholic University of America Columbus School of Law. Chief Judge Baum also served another term this past year as a member of the Rules Advisory Committee of the U.S. Court of Appeals for the Armed Forces.

On April 7, 2000 the Coast Guard Court of Criminal Appeals joined with the Navy-Marine Court of Criminal Appeals in co-hosting the William S. Fulton, Jr. Appellate Military Judge's Conference, which was attended by judges from all the other service courts of criminal appeals. The conference, held at the Federal Judicial Center in

Washington, DC, saw presentations and panel discussions on various topics of interest to appellate military judges, one of which, dealing with waiver and forfeiture of issues, was moderated by Chief Judge Baum.

On June 12-13, 2000 the judges of the Court attended the Judicial Conference of the United States Court of Appeals for the Armed Forces at Catholic University of America Columbus School of Law in Washington, DC. The two-day conference included a variety of presentations on topics such as dealing with the media, criminal trials of the century, the public image of the military courts, and the history of military justice in celebration of the fiftieth anniversary of the Uniform Code of Military Justice.

On September 19-20 2000, Chief Judge Baum, and Judges Kantor, McClelland, Cassels and Bruce participated in a two-day Appellate Military Judge's Training Seminar at Andrews Air Force Base in Washington, DC. The seminar was designed in part as a training session for recently assigned judges to the service courts of criminal appeals, but it also included presentation and panel discussions of general judicial interest. At the seminar, Chief Judge Baum moderated a panel discussion on judicial ethics.

ADDITIONAL MILITARY JUSTICE STATISTICS

Appendix A contains basic military justice statistics for the reporting period and reflects the increase/decrease of the workload in various categories.

J. S. CARMICHAEL
Rear Admiral, U. S. Coast Guard
Chief Counsel